BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of: STUDENT, Petitioner, v. MODESTO CITY SCHOOLS, Respondent.	OAH CASE NO. N2006050401

DECISION

Administrative Law Judge Peter Paul Castillo, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Modesto, California, on August 28- September 1 and 5, 2006.

Lina Foltz, Attorney at Law, represented Student. Student was not present during the hearing. Student's Mother was present during the entire hearing.

Marcella Gutierrez, Attorney at Law, represented the Modesto City Schools (District). Also present was Robin Searway, Director, Modesto City Schools Special Education Local Planning Area.

May 10, 2006, Student filed a request for mediation and due process hearing. The record remained open to receive written briefs. OAH received Student's and the District's briefs on September 29, 2006, and reply briefs on October 6, 2006. The record closed on October 6, 2006. [1]

[1] At the conclusion of the hearing on September 5, 2006, the parties failed to request to move Exhibits 65, 76, 106 and 111 into evidence. On September 6, 2006, Petitioner requested that record be reopened and these exhibits admitted into evidence. The District did not object to Petitioner's request. The record is reopened and Exhibits 65, 76, 106 and 111 moved into evidence.

ISSUES

1. During the 2002-2003, 2003-2004 and 2004-2005 school years, did the District fail to appropriately assess Student because:

A. The District did not assess Student in all areas of suspected disabilities, as described in Paragraph 1(E)?

B. The District did not determine Student's unique needs, as described in Paragraph 1(E), and services Student required?

C. The District failed to administer appropriate tests in conformity with test instructions?

D. The District failed to have qualified staff conduct the assessments?

E. Student's areas of unique needs and suspected disabilities include: Student's learning disabilities in reading, written expression and mathematics; deficits that constitute dyslexia; behavioral deficits; social-emotional needs; auditory and visual processing deficits; and assistive technology.

2. During the 2002-2003 and 2003-2004 school years, did the District fail to provide Student with a Free Appropriate Public Education (FAPE) by utilizing a resource class with no curriculum to substitute for course work in the general education curriculum and giving Student five credits to meet the graduation requirements?

3. During the 2002-2003 school year, did the District commit procedural violations that denied Student a FAPE:

A. If the November 6, 2002 Individualized Education Program (IEP) meeting was not timely?

B. If District staff developed goals and objectives for Student outside the IEP process?

C. If the District did not have a general education teacher at the November 6, 2002 and May 16, 2003 IEP meetings?

D. If the District failed to provide Parents at all IEP meeting with timely progress reports and assessment information?

E. If the District failed to have a person who could explain the District's assessment results at the IEP meetings?

4. During the 2002-2003 school year, did the District deny Student a FAPE by failing to:

A. Identify Student's unique needs and failing to develop an IEP to meet Student's unique needs, as described in Paragraph 1(E)?

B. Develop an IEP that had objective and measurable goals and objectives regarding Student's reading comprehension, written language and mathematics?

C. Develop appropriate behavioral and transition plans for Student?

D. Ensure District staff implemented Student's IEP in the general education classes?

5. During the 2003-2004 school year, did the District commit a procedural violation that denied Student a FAPE if the District failed to provide Parents with timely progress reports at the IEP meetings?

6. During the 2003-2004 school year, did the District deny Student a FAPE by failing to:

A. Identify Student's unique needs and failing to develop an IEP to meet Student's unique needs, as described in Paragraph 1(E)?

B. Develop an IEP that had objective and measurable goals and objectives regarding Student's reading comprehension, written language and mathematics?

C. Develop appropriate behavioral and transition plans for Student?

D. Ensure District staff implemented Student's IEP in the general education classes?

7. During the 2004-2005 school year, did the District commit procedural violations that denied Student a FAPE:

A. If the November 23, 2004 IEP meeting was not timely?

B. If the District did not have a general education teacher at the November 23, 2004 IEP meeting.

C. If the District failed to timely respond to Parents' May 5, 2005 request for Student's records that prevented Student and Parent from meaningfully participating in the IEP process?

D. If the District failed to timely respond to Parents' May 24, 2005 assessment request?

E. If the District failed to give Student and Parents prior written notice that the District planned to exit Student from special education due to high school graduation?

8. During the 2004-2005 school year, did the District deny Student a FAPE by failing to:

A. Identify Student's unique needs and failing to develop an IEP to meet Student's unique needs, as described in Paragraph 1(E)?

B. Develop an IEP that had objective and measurable goals and objectives regarding Student's reading comprehension, written language and mathematics?

C. Develop appropriate behavioral and transition plans for Student?

D. Ensure District staff implemented Student's IEP in the general education classes?

9. Did the District fail to provide Student with a FAPE if the District:

A. For the 2003 Extended School Year (ESY) did not provide Student with special education services during Student's general education?

B. Did not provide Student with services during the 2004 and 2005 ESYs?

10. Did the District fail to provide Student with FAPE during the 2005-2006 because the District improperly exited Student from special education through graduation and Student still required special education services?

CONTENTIONS OF THE PARTIES

Petitioner contends that the District failed to identify and assess Student in all areas of suspected disabilities, which caused the District not to offer Student needed services to provide Student with FAPE. Petitioner asserts that the District created goals and objectives in the areas of behavior, reading, writing and mathematics that did not provide Student with FAPE. Petitioner contends that the District failed to give Parents proper prior written notice regarding Student's graduation, and that the District improperly graduated Student by granting Student credits for the Resource Specialist Program (RSP) class.

The District contends that Mother prevented it from properly assessing Student because she did not permit the District to explore Student's Asperger's Syndrome nor

consent to the District's September 2004 triennial assessment plan. The District asserts that it implemented Student's IEP in his general education classes, properly informed Parents regarding Student's educational progress and developed IEPs that met Student's unique needs and provided FAPE.

FACTUAL FINDINGS

Preliminary Findings

1. Student, born October 9, 1987, lived with his parents within the District during the 2001-2002 through 2004-2005 school years. Student entered the District in August 2001, in ninth grade qualified for special education under the classification of Other Health Impaired (OHI). Student's eligibility for special education remained unchanged while Student attended high school in the District through graduation.

2002-2003 School Year - Statute of Limitations

2. A parent or student has three years after the alleged violation to file a due process complaint.[2] The three-year limitation is tolled if a district fails to provide parents with timely information, or provided inaccurate and misleading information, regarding student's educational progress.

3. Mother actively participated in Student's education during the 2002-2003 school year. Mother contributed to the development of Student's educational program through the IEP process and constantly communicated with District personnel. Mother knew of her procedural rights because the District gave Mother a copy of her rights at IEP meetings. Mother knew of her rights as she filed a prior complaint against the District that the parties resolved pursuant to a settlement agreement. Mother received from Steve Roseman, Student's tenth grade RSP teacher, timely and accurate updates regarding Student's educational progress. Mother also knew of Student's educational progress through Student's grades on his report cards from the District. Thus, the District did not misrepresent Student's academic progress, or withhold information during the 2002-2003 school year.

District's Assessment of Student in All Areas of Suspected Disability

4. A district must assess a student in all areas related to the student's disability, and cannot use a single procedure as the sole criterion to determine whether the student has a disability or an appropriate educational program.

Asperger's Syndrome, Behavioral Deficits, and Social-Emotional Needs

[2] Effective October 9, 2006, the statute of limitations is two years. (Govt. Code § 56505, subd. (l).)

5. Parents raised concerns about Student's educational difficulties and possible eligibility for special education services at Student's prior school district. James A. Wakefield, Jr., Ph.D., performed two psychoeducational assessments on Student in 2001 in response to Parents' concerns. Dr. Wakefield administered the Wechsler Intelligence Scale for Children, Third Edition (WISC III) on March 7, 2001, which showed that Student possessed an Intelligence Quotient (IQ) of 96, in the average range and just below the median score of 100. Dr. Wakefield determined that Student had an anxiety disorder. Student was on medication at the time to control his emotions, and had a diagnosis of Attention Deficit Disorder.

6. Dr. Wakefield conducted further testing on July 3, 2001 regarding Student's perceptual-motor ability, memory and written language skills. Dr. Wakefield noted that Student was not on his regular medications when tested. Dr. Wakefield administered the Woodcock-Johnson Psychoeducational Battery-Revised test and found that Student was weak in the area of written language. Dr. Wakefield administered the Stanford-Binet Intelligence Scale, 4th Edition, which showed that Student had difficulty with motor visual tasks, but had excellent memory skills. Dr. Wakefield's report recommended qualifying Student for special education services under the criteria of Specific Learning Disabled based on Student's visual-motor difficulties and weak written language skills. Dr. Wakefield proposed that Student attend regular education classes with minimal modifications, and tutoring assistance in writing skills. The IEP team qualified Student for special education with the designation of OHI in August 2001.

7. Student soon transferred into the District and Mother requested a further psychological examination of Student regarding problems with written language, health related concerns, poor organizational skills, attention and concentration, and task completion. District employee Robert Stack, a qualified school psychologist, tested Student on November 16, 2001. Mr. Stack reviewed Dr. Wakefield's July 2001 assessment, but did not have the March 2001 assessment, before conducting the assessment. Mr. Stack administered the Wide Range Assessment of Memory and Learning (WRAML). Mr. Stack found Student to be in the average range in all subtests, except for sound symbol recall that affects Student's abstract visual memory. Student had a scaled score of 7 on the sound symbol recall subtest, for which a scaled score of 10 is the median. Student's delay in this processing area correlated to Student's lower scores in broad reading, reading fluency and passage comprehension on the Woodcock-Johnson Test of Achievement III (WJTA III). The WJTA III showed that Student's performance in the areas of reading, mathematics and math calculation skills fell in the average range. The Bender-Gasalt Test (BGT) results indicated a slight weakness in perceptual motor skills with a score in the 9 year to 9 year, 11 month range.

8. Mr. Stack discussed his report at the January 25, 2002 IEP meeting. Mr. Stack expressed in his report a concern that Student may have Asperger's Syndrome. Asperger's Syndrome is a developmental disorder in which people have difficulties understanding how to interact socially. Mr. Stack had this concern based on his review of Dr. Wakefield's report, statements by Mother, his observation of Student, and his concurrent work with

another student with Asperger's Syndrome. However, Mr. Stack had to revise his report and remove any mention of Asperger's Syndrome because Mother and her sister-in-law[3] objected to that statement. Mother and the sister-in-law directed the District to focus on Student's deficits and needed services in the IEP and not to place a label on Student. Mother's demand that the District remove reference to Asperger's Syndrome prohibited the District from conducting any further assessment regarding any suspected disability related to Student's social or behavioral deficits associated with Asperger's Syndrome.[4]

9. Student had behavioral problems during the first half of the 2003-2004 school year. Student defied and talked back to school personnel, spoke out of turn in class, and got into a fight with a fellow student, which led to a three-day suspension. The District properly determined the nature of Student's behavior and social-emotion needs related to Student's discipline problems through the development of the February 2004 Level 2 Behavioral Support Plan (BSP). The Level 2 BSP properly identified Student's unique behavioral and social-emotional needs as Student's behavior improved and Student only had a single subsequent discipline report. Also, Student's Asperger's Syndrome manifestations were not severe as indicated by Student's participation in group social activities, such as a school play his junior year, and playing varsity football his senior year.

10. The District began planning for Student's triennial assessment at the start of the 2004-2005 school year. Mr. Stack proposed an assessment plan that contained a social adaptive assessment based on his continued concerns about Student's behavioral and social deficits related to Asperger's Syndrome. The District did not receive Mother's consent for this assessment plan. Mother wrote on the September 10, 2004 Assessment Plan that she wanted the District to conduct the same tests done in 2001 to determine Student's progress.

11. The District properly identified Student's areas of disability regarding Student's behavior and social-emotional needs, and wanted to assess Student regarding deficits related to Asperger's Syndrome. The District attempted to properly assess Student in these areas of suspected disability, but could not because Mother refused to allow the District to do so.

Dyslexia

12. Dyslexia is a learning disability that hinders the development of reading skills. Individuals with dyslexia have difficulty with accurate and/or fluent word recognition, spelling and word decoding abilities. Dyslexia may affect an individual's reading comprehension abilities.

13. Parents obtained a neuropsychological assessment on Student after his graduation from high school. Cynthia Peterson, Ph.D. conducted this assessment over four

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[3] The sister-in-law has significant experience in the special education field as a school psychologist.

[4] Mother subsequently informed Mr. Stack that Student had Asperger's Syndrome.

days in July and August 2005, and administered 13 test instruments to determine Student's neurocognitive functioning. Dr. Peterson reviewed Student's educational record and prior assessments conducted by Mr. Stack and Dr. Wakefield. Dr. Peterson concluded that Student had dyslexia based on Student's reading fluency and reading comprehension scores.

14. Dr. Peterson's opinion that Student has dyslexia is unpersuasive as she only considered a narrow portion of the definition of dyslexia and did not properly consider Student's education progress in high school. The District's expert, Denise P. Gibbs, Ed.D., used the accepted definition of dyslexia from the National Institute of Health (NIH) in determining that Student is not dyslexic. The NIH definition of dyslexia states that dyslexia has a neurobiological basis and a dyslexic person will have difficulty with word recognition, spelling and decoding that is caused by a phonological deficit. A phonological deficit means that a person has problems with the different sounds within a word. Both Dr. Peterson and Dr. Gibbs agree that if Student has dyslexia, Student would have exhibited these signs when he entered the District and throughout high school.

15. Dr. Gibbs reviewed of all the assessments conducted on Student by the District and Parents, spoke with Student's teachers and Mr. Stack, and reviewed Student's educational records. While Dr. Gibbs did not personally assess Student, her determination that Student does not have dyslexia is more persuasive based on her extensive education and work experience in this area, her use of the proper definition of dyslexia, and the fact that she did not focus on narrow subtest results as Dr. Peterson did.

16. Dr. Gibbs determined that Student did not have phonological deficit based on testing conducted by Lindamood-Bell in October 2005 at Parent's request. The results of the Lindamood-Bell tests denote that Student does not have phonological deficits, especially the Lindamood Auditory Conceptualization Test-Third Edition (LAC III) where Student scored in the 79th percentile.[5] Dr. Gibbs explained that the LAC III measures a person's phonological skills. Student had above average scores on all spelling tests administered during assessments, and demonstrated excellent spelling abilities according to his English teachers. Dr. Gibbs had not seen in any of the approximately 2000 dyslexic students she has worked with exhibit such excellent spelling abilities. Student scored in the 37th percentile, low average, on the Grey Oral Reading Test-Fourth Edition, Reading Comprehension subtest in the Lindamood-Bell October 2005 testing. This score signified to Dr. Gibbs that Student did not have dyslexia as dyslexic students score much lower on this test.

17. A complete review of all the testing conducted on Student and Student's educational progress supports Dr. Gibb's position that Student does not have dyslexia as an area of disability that the District needed to assess.

[5] Petitioner's expert Deborah Ross-Swain, Ed.D also administered the LAC III in November or December 2005, and Student scored in the 53rd percentile.

Auditory and Visual Processing Deficits

18. The testimony of Petitioner's expert, Patricia Gillian, M.S., and the December 3, 2005 audiological assessment of Student did not establish that Student had a significant auditory processing deficit. Ms. Gillian's assessment found that Student performed in the average range on nearly all the tests, and only slightly below normal in three tests, binaural mode, phonemic synthesis and duration pattern sequence test. Ms. Gillian's results do not establish that Student has an auditory processing disorder with slightly below average scores.

19. Ms. Gillian did not review Mr. Stack's report or the District's speech and language assessment. While not audiological assessments, both assessments contained tests that required Student to listen to the assessor. Student's April 2002 speech and language assessment found that Student was at the 50th percentile for oral directions and 79th percentile for receptive language in the Clinical Evaluation and Language Fundamental Revised test, and average to above average scores on the Test of Adolescent Learning-2 listening subtests. The District's implementation of the same modifications and accommodations Ms. Gillian years later recommended establish that the District identified Student's unique needs. The District had Student sit in front of the class, created a structured learning environment, provided Student with assistance with note taking, established a homework planner, gave Student additional test time, and provided him with a computer. Ms. Gillian's failure to review the District's prior assessments and Student's school records in preparing her assessment undercuts her conclusion that Student had an auditory processing deficit that the District failed to assess.

20. Dr. Ross-Swain assessed Student in November and December 2005, regarding Student's auditory processing. Dr. Ross-Swain did review Student's educational records as part of her assessment. Dr. Ross-Swain found that Student had an audiological processing disorder that required intensive remediation in the area of speech and language and sound based therapies. Dr. Ross-Swain also made recommendations for Student's classroom learning, similar to Ms. Gillian's and the District's modifications and accommodations.

21. Dr. Ross-Swain did not establish that the District failed assess Student in the areas of suspected disability involving Student's audiological deficits. Dr. Ross-Swain did not designate sufficiently the facts that existed while Student attended high school that would have put the District on notice that the District needed to conduct an audiological assessment. Dr. Ross-Swain focused on Student post-graduation assessments, and not Student's high school education and indications that the District missed regarding Student's deficit. Dr. Ross-Swain reviewed the District's 2002 speech and language assessment and Mr. Stack's report and did not establish that these assessment were incomplete or gave the District any indication that it needed to conduct further testing based on Student's educational history.

22. Petitioner's expert Leanne Liddicoat, O.D., opined that Student had a visual processing deficit that the District failed to identify and assess. As with Dr. Ross-Swain, Dr. Liddicoat did not adequately identify what would have put the District on notice that the District needed to assess Student in the area of visual processing deficits. Dr. Liddicoat did not review school records as part of her assessment and based her findings solely on her test scores and Mother's history of Student's education. Student did not have a significant problem reading that Student should have had, according to Dr. Liddicoat. Student's teachers noted Student's average ability to read aloud in class. Student passed the District's common exams and California High School Exit Exam (CAHSEE) that tested Student's reading abilities. Student did have problems taking notes in class, which the District adequately addressed in the IEPs. Dr. Liddicoat's failure to review Student's educational records and to consider Student's educational progress in high school invalidates any contention that the District failed to identify suspected visual processing disability.

23. Student's scores on the Visual Motor Integration (VMI) test that Dr. Liddicoat administered indicated average visual processing ability. The District did not perform the VMI due to Mother's rejection of the District September 2004 assessment plan. Even if the District had administered the VMI, the District would not have found a visual processing disorder. Thus, the District did not fail to assess Student regarding visual processing, as Student did not exhibit deficits in this area that the District did not adequately address in the IEP process, and Mother refused to permit the District to assess Student in this area.

Written Expression, Mathematics and Assistive Technology

24. Mr. Stack adequately identified Student's deficits in written expression and mathematics in his January 2002 report based on the WJTA III and WRAML scores. These scores denoted that Student only had a minor deficit in written expression and mathematics. Based on Mr. Stack's report, the District created an educational plan to address Student's needs in regular education classes. Student passed his regular education English and Mathematic classes with the accommodations and modifications that the District provided. Student's English teachers, Leo Aguilera and Charlotte Ferreira, established that Student produced grade level written work with the modifications and services provided in the IEPs as shown by Student's grades. Student received passing mathematics grades. Also, Student passed the CAHSEE in reading, writing and mathematics. Student's use of a computer and calculator to take the CAHSEE does not invalidate Student's ability to pass this exam with the same accommodations the District provided Student in his regular education classes.

25. As to assistive technology, the District did not need to assess Student in this area as the District properly determined that Student required a computer and calculator as an accommodation to complete his class work. Based on Mr. Stack's report and Student's progress in the regular education classes, the District properly identified Student's needs and was not on notice that it needed to conduct an assistive technology assessment.

District's Administration of Tests

26. Petitioner contends that the District failed to properly administer the tests reflected in the November 2004 psychological report. Mr. Stack and Lynn McSwain administered the tests in conformity with the test instructions. Ms. McSwain followed the test instructions concerning the WJTA III test and properly scored this test. Mr. Stack properly administered and scored the Wechsler Adult Intelligent Scale-Third Edition and the BGT. Mr. Stack and Ms. McSwain have the requisite qualifications to conduct the tests they administered because both have masters degrees and received instruction on test administration and interpretation as part of their masters program. Mr. Stack and Ms. Swain also have sufficient work experience in administering test instruments.

Free Appropriate Public Education

27. A district must provide a student with an educational program that is reasonably calculated to provide the student with some educational benefit in the least restrictive environment. A district is not required to provide a special education student with the best education available or to provide instruction or services that maximize a student's abilities. A school district need only provide a basic floor of opportunity that consists of access to specialized instructional and related services, which are individually designed to provide an educational benefit to the student.

Development of Student's IEP to Meet Student's Unique Needs

2003-2004 School Year

28. Pursuant to Factual Findings 4 through 25, the District did not fail to assess Student in all areas of suspected disability. The District properly identified Student's unique educational, behavioral and social-emotional needs by reviewing Dr. Wakefield's and Mr. Stack's assessments. The District also obtained the input of Parents and Student's RSP and general education teachers to identify Student's educational and behavioral deficits that negatively affected Student's educational progress. The District also reviewed Student's test scores, grades and work samples. The District had sufficient information with which to determine unique needs. The District could not expand the areas of assessment or explore further Student's Asperger's Syndrome due to Mother's refusal to allow the District to address in areas related to Asperger's Syndrome.

Behavioral Needs

29. The District creates for all special education students a Level 1 BSP to address possible behavioral problems associated with a student's learning disability. The District's Level 1 BSP for Student was not adequate as Student had several discipline reports for disrupting class, being disrespectful to teachers and not turning in homework assignments at the time of Mr. Stack's January 2002 report and corresponding IEP meeting. The District determined that Student needed a more comprehensive behavior plan based on Mr. Stack's

recommendation. However, Student's behaviors were not so severe to require a functional behavior assessment and behavior intervention plan. Mr. Stack prepared a Level 2 BSP to address Student's behavior problems. Mr. Stack consulted with Robert Shryer, Student's psychiatrist, and used information from Parents and Student's teachers to create the Level 2 BSP. The District gave the Level 2 BSP to Student's regular and special education teachers, and the BSP remained in effect through February 2004.

30. Mr. Stack designed this Level 2 BSP to reduce incidents of Student talking back to adults in authority and to increase Student's homework completion and thoroughness. The Level 2 BSP properly focused on addressing Student's learning anxiety issues by breaking down assignments into smaller units, with positive reinforcements, and giving Student additional time to complete assignments and tests. The plan also focused on creating a structured program with positive reinforcers because Student had difficulty in adjusting to change. The plan had Student sit in the front of the class and encouraged Student to participate in conversations with peers and adults. Mr. Stack properly considered Student's behavioral deficits and social-emotional needs in creating this Level 2 BSP. Mr. Stack understood that Student's problems with his processing speed and poor organization created frustration in the Student, leading to behavior problems. Mr. Stack took into consideration in developing the Level 2 BSP Student's social-emotional and behavioral deficits that gave rise to his concern that Student had Asperger's Syndrome.

31. Student's behavior improved during the 2002-2003 and first half of the 2003-2004 school years as teachers reported no serious behavior problems with Student in class. The District also provided an organizational coach, Bonnie Emerson, to assist Student. Student continued to have discipline reports for challenging school personnel during the first half of Student's junior year. In December 2003, Student got into a fight while waiting for the school bus, which led to a three-day suspension. Student's behavior problems did not rise to the level that required the District to conduct a functional behavioral assessment, but did require the District to update the Level 2 BSP.

32. Mr. Stack updated the Level 2 BSP in February 2004 as a result of the fight. Mr. Stack continued the same behavioral plans related to Student's organization skills regarding homework and class assignments in the updated Level 2 BSP. This Level 2 BSP added components related to Student's anger management issues and improving Student's social skills. The District referred Student to its Healthy Start counseling program for the remainder of the school year to work on Student's anger management issues. The February 2004 Level 2 BSP also recommended that Student participate in the District's Community Based Instruction (CBI) job program to teach Student social skills in the community. The updated Level 2 BSP with the Healthy Start counseling and CBI program was successful, as Student only had one discipline report for the remainder of his high school education for going off campus during his senior year.

Academic Needs

33. Student's biggest academic struggle during his junior year related to organization skills in turning in his homework and class assignments, according to Student's teachers. Student's failure to timely turn in his homework negatively impacted Student's educational performance. The homework planner, the RSP teachers and organization coach worked with Student. Student passed his regular education courses, which required Student to turn in homework and class assignments to pass.

34. The District met Student's unique educational needs in mathematics, reading and written expression in Student's regular education and RSP classes. The District provided Student with a RSP class, which included personalized assistance in mathematics, reading and written expression, Student's weak areas in his regular education classes. The District also provided Student with additional time to take tests, note taking assistance, and had Student sit in front of the class. Student's Kaufman Test of Educational Achievement (KTEA) results showed that Student had average scores in all mathematics and reading subtests. Pamela Darr, 11th grade RSP teacher, established that Student met the goals and objectives in the IEP. Student passed all his regular education classes, including the common final exam that the District required all students in regular education courses to pass. Student's passing grades, meeting his goals and objective and KTEA scores show that the District met Student's unique educational needs.

2004-2005 School Year

35. The District attempted to assess Student in all areas of suspected disability in September 2004 for the triennial assessment, but could not due to Mother's refusal to provide consent. Mother only agreed to the same assessments conducted by Mr. Stack and Dr. Wakefield in 2001. Thus, the District could not conduct social adaptive, sensory motor, or academic achievement assessments.

36. The District met Student's unique educational and behavioral needs with the continuation of its educational program. Student passed his regular education classes and his teachers confirmed that Student made adequate educational progress in his regular education classes. Russ Garcia, Student's RSP teacher, affirmed that Student met the goals and objectives in the IEP.

IEP Goals and Objectives Regarding Student's Reading Comprehension, Written Language and Mathematics

2003-2004 School Year

37. Mr. Stack and Student's general education and RSP teachers established Student did not have significant deficits in the of areas reading comprehension, written language and mathematics. Student has an average IQ and made adequate progress in the regular education curriculum and received passing grades with the accommodations and

modifications the District provided. The District developed appropriate goals and objectives for Student to learn grade appropriate reading and writing and mathematic skills in his regular education class, which were reinforced in the RSP class.

38. For the first half of the 2003-2004 school year, the Student had goals and objectives outline in the November 6, 2002 IEP. Student's mathematics goals and objectives focused on Student obtaining the skills required to pass his regular education math class. The District appropriately did not develop mathematic goals at the December 3, 2003 IEP meeting as Student had already mastered the skills needed to pass his regular education mathematics class. Student passed his math class in the 2003-2004 school year with "C" grades in both semesters. Student did not require a math class in the 2004-2005 school year as Student had sufficient math credits to graduate, and passed the math portion of the CAHSEE during Student's sophomore year.

39. Student's reading goals included Student being able to read a passage from a literature book, answer comprehension questions, and identify the main and supporting ideas from these passages. Student required these skills to pass his regular education English class. The District developed a writing goal for Student to be able to write a five-paragraph essay at grade level using the District's writing conventions and for Student to use correct grammar, spelling and punctuation in sentences. Student received a "C" grade for the first semester in English and a "B-" in the second semester and passed the CAHSEE in reading and writing, which indicated that Student did not need significant assistance in these areas.

40. Student's IEP Goals and objectives were measurable as RSP teachers went over the goals and objectives with the regular education teachers and reviewed Student's work to determine if Student had met these goals. Ms. Darr adequately explained the District's conclusion that Student had met these goals and objectives based on Student's regular education and RSP class work and grades.

2004-2005 School Year

41. The District developed an appropriate IEP with objective and measurable goals and objectives for Student in reading and writing. For the first semester, the District continued with the goals and objectives developed at the December 3, 2003 IEP meeting, which continued to be appropriate to meet Student's needs in written language and reading. On March 11, 2005, Mother consented to the goals and objectives developed at the November 23, 2004 and January 6, 2005 IEP meetings. The District modified Student's reading and writing goals to reflect the level of coursework expected of all 12th grade students, and to work with Student on editing his own written work and use of an organizational planner to turn in homework timely.

42. Student's writing goals and objectives included writing a five paragraph essay using the District's writing rubric used in Student's regular education English class. Student met this goal by receiving a C grade, which required the completion of an appropriate five-paragraph essay. Student could write essays with the different writing styles required for

regular education students when prompted by the RSP teacher and paraprofessional. Pursuing this goal and objective gave Student additional practice in writing. The RSP teacher and paraprofessional worked with Student on editing information is his reports and his writing samples, which Student accomplished. Student needed an organization planner because Student had difficulty keeping his homework assignments organized so he could timely complete his work. Thus, the District developed appropriate goals and objectives that were objective and measurable to meet Student's unique needs in reading comprehension and written language.

Student's Behavioral Plan 2003-2004 and 2004-2005 School Years

43. Pursuant to Factual Findings 29 through 32, the District developed an adequate behavior plan for Student based on Student's behavioral needs. Student's RSP teachers gave the regular education teachers copies of the behavior support plans. Student's general education and RSP teachers implemented the behavior support plans, which led to Student's improved behavior. Ms. Darr spoke with Mr. Shryer about students with Asperger's Syndrome, which helped Ms. Darr improve Student's behavior. The District's inclusion of the Healthy Start counseling improved Student's anger management. Student's participation in the CBI program improved Student's social skills and ability to interact with other persons. Student's teachers did not describe any significant behavior problems that impacted Student's education because the District's Level 1 and 2 BSPs met Student's needs.

Student's Transition Plan 2003-2004 and 2004-2005 School Years

44. The District knew that Student wanted to attend the local junior college, and was very interested in farming, law enforcement and the military. The District developed an adequate education plan through the IEP process to prepare Student to attend a junior college. The District provided Student with the academic skills in English and mathematics that Student needed to succeed at the junior college level with the assistance of the disability center at the junior college. The District informed Student and Parents how to access the local junior college disability center to ensure Student received the needed supports.

45. The District also had Student complete a vocational assessment to gauge Student's vocational aspirations and how Student could meet those aspirations. The assessment indicated that Student had interests in farming, law enforcement and the military. As to farming, District provided Student with adequate support through its agricultural courses that Student took. For the military, the District informed Student about on campus military recruitment where Student could get more information. Regarding law enforcement, the District worked with Student on social skills that he would need for law enforcement and making sure Student exited high school with a regular education diploma.

46. The District recommended that Student attend its CBI program to improve Student's social skills,. The program's coordinator, John Blackman, explained that the District designed CBI to teach lower functioning students job skills, but CBI can be used for higher functioning students, like Student, to teach social skills. Student needed to learn

better social skills to function in a community setting. Student participated in the CBI program with Mother's approval. Student's first job was at a print shop at a local hospital at the end of the junior year, and then cleaning and stocking at the Costco food court for Student's senior year. The District properly designed both jobs to teach Student personal interaction skills and working in a fast paced environment. Student's employment at Costco taught Student to work at a faster pace in a crowded environment, and the ability to follow instructions. Student did well at both jobs. Also, Student discussed working part-time if he attended junior college, which the CBI program prepared Student to accomplish.

Implementation of Student's IEP in his General Education Classes

2003-2004 School Year

47. Ms. Darr ensured that the District implemented the IEP in Student's general education classes. Ms. Darr had frequent contact with general education teachers about Student. Ms. Darr, while not giving the teachers copies of the IEP goals and objectives, did regularly met with the teachers to discuss the goals and objectives and Student's progress. The regular education teachers implemented the IEP in their classes. Ms. Darr gave a copy of Student's behavior plan to the regular education teachers.

48. Student received C grades in English and algebra during the first semester, and a B" in English and C in algebra during the second semester. Student received B grades for both semesters in his agricultural classes. In the first semester, Student received a B- in drama, and a C in theater stage production. Student also took a college preparatory level course, United States history, for which he received a C in the first semester and an A in the second semester. Student's grades provided a true measure of Student's effort and ability in these classes, as the District did not inflate the grades. Student completed the goals and objectives the District created to ensure Student had the skills needed to succeed in the regular education curriculum and to make adequate educational progress. Student's educational progress in his regular education courses, as indicated by his grades, meeting the goals and objectives, and decreased behavior problems, establish that the District successfully implemented Student's IEP in the general education environment.

2004-2005 School Year

49. Mr. Garcia ensured that the general education teachers implemented Student's IEP by informing the teachers of Student's modifications and goals and objectives. Mr. Garcia met with the regular education teachers regarding Student's progress concerning the goals and objectives and modifications and accommodations, such as extra time to take tests. Student received a B in English the first semester, and C the next semester. Student received C grades both semesters in college preparatory United States government and economics. Student's general education teachers implemented Student's IEP, and Student made adequate educational progress as indicated by his passing grades and meeting his goals and objectives.

Procedural Violations

50. A school district must comply with the requisite procedural requirements in creating a student's individualized education program. A district's failure to comply with the procedural requirements may deny a student a free appropriate public education if the procedural violation impedes the student's right to FAPE, significantly impedes a parent's opportunity to participate in the education decision making process, or causes a deprivation of educational benefits.

2003-2004 School Year

51. The District did not commit a procedural violation as the IEP documents and Ms. Darr establish that the District provided Parents with timely and accurate progress reports on Student's education and meeting the goals and objectives.

2004-2005 School Year

52. The District held the November 23, 2004 IEP meeting in a timely fashion, and a general education teacher attended this IEP meeting. The District received on May 5, 2005, a month before Student's graduation, a request for a copy of Student's educational records from Parents. Mother did not explain how the District's delay in producing the records listed in her May 26, 2005 letter to the school superintendent prevented her from meaningfully participating in Student's education. Parents meaningfully participated in Student's educational program as the District kept Parents adequately informed of Student's education progress towards graduation at IEP meetings and in correspondence and e-mail. Finally, the District did not fail to timely respond to Parents May 24, 2005 assessment request because Student properly graduated approximately two weeks after the Parents' request. The District need not assess Student further, nor reply to Parents' request, once he properly exited from special education through graduation.

Prior Written Notice

53. A district must provide prior written notice to parents when the district proposes to initiate or change the child's educational placement, which includes a student graduating from high school. The IEPs document the District's plan to have Student graduate with a regular high school diploma in 2005, starting with the November 6, 2002 transition plan. The March 2, 2005 IEP states that Student was on track to graduate and does not need any more credits. Mother signed these IEPs to acknowledge that she agreed to the IEPs. Mother signed on March 11, 2005, the November 23, 2004 IEP, and initialed that the District informed her of the requirements for Student to graduate from high school. Thus, the District provided Parents with prior written notice regarding Student's graduation from high school with a regular diploma.

Resource Specialist Class Credits

54. Student received five elective credits towards graduation each semester for each RSP class Student passed. Student obtained A grades in the RSP class throughout high school. Student received these grades based on his performance and participation in the class, and the District did not automatically give Student a passing grade. The RSP class taught Student important academic skills Student needed to succeed in his regular education courses. The District appropriately awarded Student credits for graduation for passing the RSP classes, as the RSP class was a proper class to receive credits toward graduation.

Extended School Year Services

55. A district must provide a student with special education services during the Extended School Year if a student's educational progress will regress, and student's limited recoupment capacity, would make it impossible or unlikely that the student will attain the level of self-sufficiency and independence that would otherwise be expected in view of student's handicapping condition. The District did not provide Student with special education services during the 2003 or 2004 ESYs. Student did not require educational services during the ESY. Student made adequate education progress during the regular school. Student was able to recoup quickly any loss in education caused by not going to school during the summer because Student did not have significant special education needs or deficits.

LEGAL CONCLUSIONS

Applicable Law

1. Student has the burden of proof as to the issues designated in Issues 1 through 10, of this Decision. (*Schaffer v. Weast* (2005) 546 U.S. 49 [163 L.Ed.2d 387].)

2. Pursuant to California special education law, the Individuals with Disabilities in Education Act (IDEA) and, effective July 1, 2005, the Individuals with Disabilities in Education Improvement Act (IDEIA), children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (Ed. Code § 56000.[6]) FAPE consists of special education and related services that are available to the student at no charge to the parent or guardian, meet the state educational standards, include an appropriate school education in the State involved, and conform to the child's IEP. (20 U.S.C. § 1401(8) (IDEA 1997); 20 U.S.C. § 1402(9) (IDEIA 2004).) The term "related services" includes transportation and such developmental, corrective, and other supportive services as may be required to assist a child to benefit from special education. (20 U.S.C. § 1401(22) (IDEA 1997); 20 U.S.C. § 1402(26) (IDEIA 2004).) "Special education" is defined as specially

[6] All statutory citations to the Education Code are to California law, unless otherwise noted.

designed instruction, at no cost to parents, to meet the unique needs of the student. (20 U.S.C. § 1401(25) (IDEA 1997); 20 U.S.C. § 1402(29) (IDEIA 2004).)

3. California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code § 56031.) In California, related services may be referred to as designated instruction and services. (Ed. Code § 56363, subd. (a).)

4. In *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200, 102 S.Ct. 3034, the United States Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the requirement of the IDEA. The Court determined that a student's IEP must be reasonably calculated to provide the student with some educational benefit, but that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Id*. at 198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services, which are individually designed to provide educational benefit to the student. (*Id*. at 201.) De minimus benefit or trivial advancement, however is insufficient to satisfy the *Rowley* standard of "some" benefit. (*Walczak v. Florida Union Free School District* (2nd Cir. 1998) 142 F.3d at 130.) Rather, a child's academic progress must be viewed in light of the limitations imposed by his or her disability and must be gauged in relation to the child's potential. (*Mrs. B. v. Milford Board of Education* (2nd Cir. 1997) 103 F.3 1114, 1121.)

5. To determine whether a district offered a student a FAPE, the analysis must focus on the adequacy of each district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) If the district's program was designed to address the student's unique educational needs, was reasonably calculated to provide student some educational benefit, and comported with student's IEP, then the district provided a FAPE, even if student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. School districts are also required to provide each special education student with a program in the least restrictive environment; with removal from the regular education environment occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412(a)(5)(A); Ed. Code § 56031.)

6. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)[7] It must be evaluated in terms of what was objectively reasonable when the

[7] Although *Adams* involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in *Adams* to other issues concerning an IEP (*Christopher S. v. Stanislaus County Off. of Education* (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its

IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district; not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987), 811 F.2d 1307, 1314.)

7. *Rowley* also recognized the importance of adherence to the procedural requirements of the IDEA as part of the FAPE analysis. Pursuant to 20 U.S.C. section 1415(f)(3)(E)(ii), of IDEIA, for a procedural violation to deny the student FAPE the procedural violation must either: 1) impede the student's right to FAPE; 2) significantly impede a parent's opportunity to participate in the education decision making process; or 3) cause a deprivation of educational benefits. (*see, W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

8. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted. (Ed. Code § 56320.) Thereafter, special education students must be reassessed every three years, or more frequently, if conditions warrant, or if the pupil's parent or teacher request a new assessment and that a new IEP be developed. (Ed. Code § 56381.) The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or an appropriate educational program for the student. (20 U.S.C. § 1414 (a)(2), (3); Ed. Code § 56320, subd.(e), (f).) Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2) and (3); Ed. Code § 56320, subd. (a) and (b).)

9. Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2), (3); Ed. Code § 56320, subd. (a), (b).)

10. There are many behaviors that will impede a child's learning or that of others that do not meet the requirements for a serious behavior problem requiring a behavior intervention plan. These less serious behaviors require the IEP team to consider and, if necessary, develop positive behavioral interventions, strategies and supports. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.346(a)(2)(i), (b); Ed. Code, § 56341.1, subd. (b)(1).) In California, a behavior intervention is "the systematic implementation of procedures that

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analysis of this issue for an IEP (*Pitchford v. Salem-Keizer School Dist. No. 24J* (D. Or. 2001) 155 F. Supp. 2d 1213, 1236).

result in lasting positive changes in the individual's behavior." (5 C.C.R. § 3001, subd. (d).) It includes the design, evaluation, implementation, and modification of the student's individual or group instruction or environment, including behavioral instruction, to produce significant improvement in the student's behavior through skill acquisition and the reduction of problematic behavior. (*Ibid*.) Behavioral interventions should be designed to provide the student with access to a variety of settings and to ensure the student's right to placement in the least restrictive educational environment. (*Ibid*.) If a student's behavior impedes learning, but does not constitute a serious behavior problem, the IEP team must consider behavior interventions as defined by California law. An IEP that does not appropriately address behavior that impedes a child's learning denies a student a FAPE. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 444 F.3d 1149; *Neosho R-V School Dist. v. Clark* (8th Cir. 2003) 315 F.3d 1022, 1028; 5 C.C.R. § 3001, subd. (f).)

11. Education Code section 56505, subdivision (l), provides that a party may file a Complaint within a three-year statute of limitations until October 9, 2006, when the statute of limitations goes to two years. The time period limitation shall not apply to a parent if the parent was prevented from requesting the due process hearing due to either specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request, or the local educational agency's withholding of information from the parent required to be provided to the parent.

12. A district's obligation to provide an eligible special education student with FAPE terminates when the Student graduates from high school. (*Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.) A graduated student may challenge whether a district properly graduated the student, or otherwise the case is moot. (*T.S. v. Independent School District No. 54* (10th Cir. 2001) 265 F.3d 1090, 1093.) If the district properly graduated the student from high school, the student or parent is not entitled to prospective relief after the date the student graduated. Parent and student may seek reimbursement for expenditures caused by a district's failure to provide FAPE. (*Department of Education, State of Hawaii v. Cari Rae S.* (D. Hawaii 2001) 158 F. Supp. 2d 1190, 1196, n.3.) A student's graduation does not relieve a district's obligation to provide compensatory education to remediate the harm caused to student by the district's failure to provide student with FAPE before graduation.

13. A district is required to provide written notice to the parents of the child whenever the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. (20 U.S.C. §1415(b)(3).) This includes a student's graduation with a regular diploma and exit from high school as the graduation constitutes a change in placement due to the termination of services upon graduation. (34 C.F.R. 300.122(a)(3)(iii)(old); 34 C.F.R. 300.102(a)(3)(new).) The notice given to the parents of the child must meet the requirements specified in Title 20 United States Code section 1415(c)(1). Not providing student or parents with prior written notice of student's graduation is a technical, not a substantive defect that may deny the student FAPE. (*T.S. v. Independent School District No. 54* (10th Cir. 2001) 265 F.3d 1090, 1093) Also, IDEA does

not require the district to hold an exit IEP meeting before a student graduates. (*T.S. v. Independent School District No. 54* (10th Cir. 2001) 265 F.3d 1090, 1094.)

14. Special education is to be provided if concern about regression to individuals with handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. (34 C.F.R. § 300.309; 5 C.C.R. § 3043; Ed. Code, § 56345, subd. (b)(3).)

Determination of Issues

Issue 1A. During the 2002-2003, 2003-2004 and 2004-2005 school years, did the District fail to appropriately assess Student because the District did not assess Student in all areas of suspected disabilities?

A. Pursuant to Factual Findings 5 through 25, the District assessed Student in all areas of suspected disabilities as Student did not have dyslexia or an auditory or visual processing disorder. The District could not assess Student further in areas of suspected disabilities related to Asperger's Syndrome as Mother refused to permit the District to assess. The District properly assessed Student in the areas of reading, written expression, mathematics, and assistive technology. Student's mild disabilities in these areas did not require any further assessments than those demonstrated that the District conducted.

Issue 1B. During the 2002-2003, 2003-2004 and 2004-2005 school years, did the District fail to appropriately assess Student because the District did not determine Student's unique needs and services Student required?

A. Pursuant to Factual Findings 5 through 25, the District properly determined Student's unique needs related to Student's reading, written expression and mathematics deficits. The District determined Student's unique needs related to Student's Asperger's Syndrome, but could not conduct further assessments to determine any other needs based on Mother's refusal to consent to further assessments. Student did not have unique needs related to auditory or visual processing that the District failed to meet.

Issue 1C. During the 2002-2003, 2003-2004 and 2004-2005 school years, did the District fail to appropriately assess Student because the District failed to administer appropriate tests in conformity with test instructions?

A. Pursuant to Factual Findings 5 through 26, the District administered the appropriate tests based on Student's unique needs and the tests that Mother permitted the District to use. The District followed the test instructions and qualified personnel administered the tests.

Issue 1D. *During the 2002-2003, 2003-2004 and 2004-2005 school years, did the District fail to appropriately assess Student because the District failed to have qualified staff conduct the assessments?*

A. Pursuant to Factual Finding 26, the District also followed the test instructions and had qualified personnel administer the tests. The District followed the test instructions and qualified personnel administered the tests.

Issue 2. *During the 2002-2003 and 2003-2004 school years, did the District fail to provide Student with a Free Appropriate Public Education (FAPE) by utilizing a resource class with no curriculum to substitute for course work in the general education curriculum and giving Student five credits to meet the graduation requirements?*

A. Pursuant to Factual Finding 54, the District properly awarded Student credits for graduation for the RSP class.

Issue 3. *During the 2002-2003 school year, did the District commit procedural violations that denied Student a FAPE?*

A. Pursuant to Factual Finding 3, this claim is barred by the Statute of Limitations as the District did not misinform Parents as to Student's educational progress. Mother was intimately involved in Student's special education through her frequent contact with Student's IEP team and teachers and was aware of Student's educational progress. Mother received notice of her procedural rights from the District, and was knowledgeable of her due process rights.

Issue 4. *During the 2002-2003 school year, did the District deny Student a FAPE?*

A. Pursuant to Factual Finding 3, this claim is barred by the Statute of Limitations as the District did not misinform Parents as to Student's educational progress. Mother was intimately involved in Student's special education through her frequent contact with Student's IEP team and teachers and was aware of Student's educational progress. Mother received her notice of procedural rights from the District, and was knowledgeable of her due process rights.

Issue 5. *During the 2003-2004 school year, did the District commit a procedural violation that denied Student a FAPE by Failing to provide Parents with timely progress reports at the IEP meetings?*

A. Pursuant to Factual Finding 51, the District provided parent with timely progress reports at IEPs through District personnel.

Issue 6A. *During the 2003-2004 school year, did the District deny Student a FAPE by failing to identify Student's unique needs and failing to develop an IEP to meet Student's unique needs?*

A. Pursuant to Factual Findings 28 through 34 and Determination of Issues 1A, the District properly identified Student's unique needs. The District developed an appropriate IEP to meet Student's unique needs. Student has average intelligence and did not have significant educational and behavioral deficits that required extensive special education services. The District met Student's educational needs through the RSP class and the accommodations and modifications made to Student's regular education program. The District met Student's behavioral and social emotional needs through the District's creation of the Level 2 Behavior Plan that improved Student's behavior.

Issue 6B. *During the 2003-2004 school year, did the District deny Student a FAPE by failing to develop an IEP that had objective and measurable goals and objectives regarding Student's reading comprehension, written language and mathematics?*

A. Pursuant to Factual Findings 37 through 40, the District developed appropriate, objective and measurable goals and objectives for Student regarding reading comprehension, written language and mathematics. The goals and objectives were geared to Student's passing his regular education courses and obtaining adequate educational progress.

Issue 6C. *During the 2003-2004 school year, did the District deny Student a FAPE by failing to develop appropriate behavioral and transition plans for Student?*

A. Pursuant to Factual Findings 29 through 32 and 43, the District developed an appropriate behavior plan based on Student's discipline problems that negatively impacted Student's education through his defiance of authority figures at the high school and poor social and organizational skills. The behavior plan reduced Student's defiance of teachers, and the District appropriately revised the Level 2 BSP in February 2004 after Student got into a fight with another Student in December 2003. Student's behaviors significantly improved after the February 2004 Level 2 BSP, which included providing counseling through the District's Healthy Start Program and improving social skills through the CBI program. Student did not have significant enough behavioral problem to require functional behavioral assessment.

B. Pursuant to Factual Findings 44 through 46, the District developed an appropriate transition plan for Student after exploring Student's areas of interests in attending the local junior college and also in the career areas of agriculture, military and law enforcement. The District appropriately determined that Student needed to learn social skills as part of his transitioning to life after high school and properly enrolled Student in its CBI program to teach Student social skills in a real world, job situation.

Issue 6D. During the 2003-2004 school year, did the District deny Student a FAPE by failing to ensure District staff implemented Student's IEP in the general education classes?

A. Pursuant to Factual Findings 47 through 48, Ms. Darr and her paraprofessional worked with Student's general education teachers to ensure that the teachers implemented Student's IEP. The regular education teachers regularly communicated with Student's RSP teacher and paraprofessional regarding Student's progress. The regular education teachers were aware of Student's IEP and implemented the IEP in their classrooms.

Issue 7A. During the 2004-2005 school year, did the District commit procedural violations that denied Student a FAPE if the November 23, 2004 IEP meeting was not timely?

A. Pursuant to Factual Finding 52, the November 23, 2004 IEP meeting was timely.

Issue 7B. During the 2004-2005 school year, did the District commit procedural violations that denied Student a FAPE if the District did not have a general education teacher at the November 23, 2004 IEP meeting?

A. Pursuant to Factual Finding 52, a regular education teacher attended the November 23, 2004 IEP meeting.

Issue 7B. During the 2004-2005 school year, did the District commit procedural violations that denied Student a FAPE if the District failed to timely respond to Parents' May 5, 2005 request for Student's records that prevented Student and Parent from meaningfully participating in the IEP process?

A. Pursuant to Factual Finding 52, Petitioner did not establish that the District responded to Parents' May 5, 2005 record request in an untimely manner, or interfered with Student's educational progress or Parent's ability to participate in the special education process. Also, the District's alleged delay in responding does not create any relief that OAH may grant based on Student's graduation.

Issue 7C. During the 2004-2005 school year, did the District commit procedural violations that denied Student a FAPE if the District failed to timely respond to Parents' May 24, 2005 assessment request?

D. Pursuant to Factual Finding 52, the District did not fail to timely respond to Parent's May 24, 2005 assessment request because Student properly graduated from high school two weeks later, which relieved the District's obligation to conduct any further assessments on Student.

Issue 7D. *During the 2004-2005 school year, did the District commit procedural violations that denied Student a FAPE if the District failed to give Student and Parents prior written notice that the District planned to exit Student from special education due to high school graduation?*

A. Pursuant to Factual Finding 53, the District gave Petitioner prior written notice that Student would graduate from high school at the completion of the 2004-2005 school year.

Issue 8A. *During the 2004-2005 school year, did the District deny Student a FAPE by failing to identify Student's unique needs and failing to develop an IEP to meet Student's unique needs?*

A. Pursuant to Factual Findings 35 through 36 and Determination of Issues 1A above, the District properly identified Student's unique needs. The District developed an appropriate IEP to meet Student's unique needs. Student has average intelligence and did not have significant educational and behavioral deficits that required extensive special education services. The District met Student's educational needs through the RSP class and the accommodations and modifications made to Student's regular education program. The District met Student's behavioral and social emotional needs through the District's creation of the Level 2 Behavior Plan that improved Student's behavior.

Issue 8B. *During the 2004-2005 school year, did the District deny Student a FAPE by failing to identify Student's unique needs and failing to develop an IEP that had objective and measurable goals and objectives regarding Student's reading comprehension, written language and mathematics?*

A. Pursuant to Factual Findings 41 through 42, the District developed appropriate, objective and measurable goals and objectives for Student regarding reading comprehension, written language and mathematics. The District developed the goals and objectives based on Student's needs to successfully pass Student's regular education courses and to allow Student to obtain educational progress.

Issue 8C. *During the 2004-2005 school year, did the District deny Student a FAPE by failing to identify Student's unique needs and failing to develop appropriate behavioral and transition plans for Student?*

A. Pursuant to Factual Finding 43, the District developed an appropriate behavior plan based on Student's discipline problems that were negatively impacting Student's education through his defiance of authority figures at the high school. The behavior plan reduced Student's defiance of teachers, and improved Student's compliance in class, organization Student's social skills. Student did not have discipline or behavior problems during his senior year.

B. Pursuant to Factual Findings 44 through 46, the District developed an appropriate transition plan for Student after exploring Student's areas of interests in attending the local junior college and also in the career areas of agriculture, military and law enforcement. The District appropriately determined that Student needed to learn social skills as part of his transitioning to life after high school and properly enrolled Student in its CBI program to teach Student social skills in a real world, job situation.

Issue 8D. During the 2004-2005 school year, did the District deny Student a FAPE by failing to ensure District staff implemented Student's IEP in the general education classes?

A. Pursuant to Factual Finding 49, Mr. Garcia and his paraprofessional worked with Student's general education teachers to ensure that the teachers implemented Student's IEP. The regular education teachers regularly communicated with Student's RSP teacher and paraprofessional with each other as to Student's progress. The regular education teachers were aware of Student's IEP and implemented the IEP in their classrooms.

Issue 9. Did the District fail to provide Student with a FAPE if the District for the 2003, 2004 and 2005 ESYs did not provide Student with special education services during Student's general education?

A. Pursuant to Factual Finding 55, Student did not require ESY services because Student was able to recoup any education lost after the summer break.

Issue 10. Did the District fail to provide Student with FAPE during the 2005-2006 because the District improperly exited Student from special education through graduation and Student still required special education services?

A. Pursuant to Factual Findings 53 and 54, the District properly existed Student from high school as Student met the graduation requirements to receive a regular diploma and the District provided Petitioner with prior written notice of the graduation.

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to each party has prevailed on each issue heard and decided. The following findings are made in accordance with this statute:

1. Concerning Issues 1 through 10, the District prevailed.

RIGHT TO APPEAL THIS DECISION

The parties to this case may appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this Decision. (Ed. Code § 56505, subd. (k).)

DATED: October 30, 2006

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings
Special Education Division